

REMARKS

Claims 1, 2 and 5-13 are presently pending in the application. In view of the following argument and the attached Terminal Disclaimer, Applicants respectfully submit that the claims are in condition for allowance.

Claim Rejections – 35 U.S.C. 101 & Non-Statutory Double Patenting

Claim 1 stands rejected under Section 101 for allegedly claiming the same invention as claim 1 of prior U.S. Patent No. 6,700,870 ("the '870 Patent"). Applicant respectfully submits that this rejection is improper for the following reason.

In order for claims to be drawn to the "same invention" (i.e., identical subject matter), the conflicting claims must be "coextensive", that is, they contain the same limitations. In this regard, Claim 1 of the '870 Patent includes the following additional limitations that are not found in claim 1 of the instant application, specifically:

...wherein said predetermined event is the addition of at least one additional ATM data route through a switch of said ATM network through which said data stream passes.

For this reason, claim 1 of the present application is not drawn to the same invention as claim 1 of the '870 Patent, and the rejection under Section 101 should be withdrawn.

In response to the non-statutory double patenting rejections of claims 2 and 5-13 in view of the '870 Patent individually and in combination with Burns U.S. Patent No. 6,665,295 and Bigham U.S. Patent No. 6,041,056, Applicants are submitting a Terminal Disclaimer herewith in compliance with 37 C.F.R. §1.321(c), which limits the term on any patent granted on the instant application to that of the '870 Patent.

Conclusion

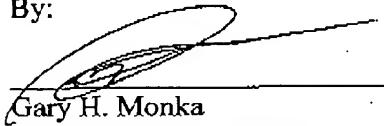
In view of the foregoing, Applicants respectfully submit that claims 1, 2 and 5-13 are in condition for allowance and allowance of these claims at an early date is solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. 1.16 or 1.17 to AT&T Corp. Account No. 01-2745. The

Examiner is invited to contact the undersigned at (908) 707-1573 to discuss any matter concerning this application.

Respectfully submitted,
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By:

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